

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 199

BY SENATOR WELD

[Introduced January 9, 2020; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §30-42-1, §30-42-2, §30-42-3, §30-42-4, §30-42-5, §30-42-6, §30-42-7, §30-
3 42-8, §30-42-9, §30-42-10, §30-42-11, §30-42-12, §30-42-13, §30-42-14, and §30-42-15,
4 all relating to creating the Court Reporter Act of 2020; and providing for the administration
5 and certification of court reporters, including application, fees, criteria for approval or
6 denial of certification, resolution of complaints concerning certified reporters, and the
7 discipline and administrative hearing process.

Be it enacted by the Legislature of West Virginia:

ARTICLE 42. COURT REPORTER ACT OF 2020.

§30-42-1. Short title.

1 This article shall be known, and may be cited, as the “Court Reporter Act of 2020”.

§30-42-2. Applicability.

1 (a) This article applies to the standard and temporary certification of reporters. It
2 addresses all components of the certification process including application, fees, criteria for
3 approval or denial of certification, resolution of complaints concerning certified reporters and the
4 discipline and administrative hearing process. If there is any conflict, this article shall govern. If
5 there is any conflict between the applicable portions of §47-27-1 et seq., §57-4-1, or §57-4-2 of
6 this code and this article, this article governs.

7 (b) This article applies to persons or entities that use stenographic, sound-only, or voice
8 writing means of recording but does not apply to other means of recording. This article does not
9 apply to official court reporters or their substitutes appointed by judges pursuant to §51-7-1 of this
10 code when acting solely in their official capacities, or reporters employed by local or federal courts.
11 This article does not limit the contempt powers of the court or the authority of the court to discipline
12 court employees.

13 (c) Any person holding a certified reporter’s certification pursuant to this article is exempt
14 from paying general consumers sales and service tax pursuant to §11-15-1 et seq. of this code.

15 This exemption is retroactive from the date of enactment of this legislation.

§30-42-3. Certification required.

1 A person may not report any testimony given under oath before or for submission to, any
2 court, referee or court examiner, by any board, commission or other body or in any proceeding
3 where a verbatim record is required, including depositions in this state unless the person is
4 certified pursuant to this article. It is unlawful for any person who is not certified pursuant to this
5 article to represent himself or herself as a certified reporter. For eligibility to report a verbatim
6 record in any sworn proceeding in this state for use in any court in this state, all persons shall
7 hold a valid certificate and comply with the requirements of this article.

§30-42-4. Definitions.

1 As used in this article, unless the context requires a different meaning:

2 “Affiliate” means an individual or entity that directly or indirectly, through one or more
3 intermediaries, controls, is controlled by, or is under common control with, the individual or entity
4 specified.

5 “Board” means “the board of certified reporters” as provided in this article.

6 “Certify” means “board authorization to engage in activities regulated by the board” as provided in
7 this article.

8 “Certification” and “certificate holder” means certification and temporary certification that is issued
9 by the board that authorizes the individual to perform reporting as a certified reporter within West Virginia.

10 “Certified reporter” means a person, including a temporary certificate holder, who is certified by the
11 board and who records and transcribes a verbatim record in any sworn proceeding by means of written
12 symbols or abbreviations in shorthand, machine writing, voice writing, or sound-only recording.

13 “Registered reporting firm” means an individual or entity that is registered pursuant to this article
14 and for compensation offers to provide or provides reporting services or related services but does not
15 personally provide the service as a certified reporter.

16 “Report” means to stenographically, by voice writing, or sound-only recording to record and
17 transcribe sworn proceedings.

18 “Voice writing” means the making of a verbatim record of the spoken word by means of
19 repeating words of the speaker into a device that produces a recording of the same.

§30-42-5. Administration.

1 Role and Responsibilities of the board. -- In addition to the requirements of this article
2 relating to the certification and licensing program, there is hereby established the “Certified
3 Reporters Fund” which shall be administered by the board. The board may receive and expend
4 moneys from the fund.

§30-42-6 Board of certified reporters.

1 (a) Composition. –

2 (1) The board of certified reporters is hereby established consisting of the following seven
3 members who are citizens of the United States and the State of West Virginia: *Provided*, That the
4 initial court reporters and reporting firm owner may not be required to be licensed pursuant to this
5 article until after July 1, 2020:

6 (A) One registered reporting firm owner who is a resident of this state or who owns a court
7 reporting business incorporated in this state;

8 (B) One certified reporter who is a resident of this state, who has been an official court
9 reporter for at least five years and who is appointed by the Governor;

10 (C) Three certified reporters who are residents of this state, who have been freelance
11 reporters for at least five years and who are appointed by the Governor;

12 (D) One attorney who is a resident of this state, who has been licensed to practice law in
13 this state for at least five years and who is appointed by the Governor; and

14 (E) One public member who is appointed by the Governor.

15 (2) Members who are appointed pursuant to this section 6, paragraphs (a)(1)(A) through
16 (E) of this section, shall serve the following terms: The initial members who are appointed shall
17 begin July 1, 2020, and all appointments shall be made by the Governor prior to July 1 in any year
18 for which appointments are to be made. In making court reporter appointments to the board, the

19 Governor shall receive, but may not be bound by, recommendations from interested court reporter
20 groups, including, but not limited to, the West Virginia Court Reporters Association. The initial
21 members shall serve the following terms as designated by the Governor:

22 (A) Three members shall serve for two years;

23 (B) Two members shall serve for three years; and

24 (C) Two members shall serve for four years.

25 (3) Subsequent terms of office shall be for four years. No member may serve more than
26 two consecutive terms. If there is a vacancy, the Governor shall fill the vacancy for the unexpired
27 term. Each member shall serve until a successor is duly appointed and qualified.

28 (4) At its first meeting each calendar year, the board shall elect a president, vice-president
29 and secretary from its membership. No member may be elected to serve more than two
30 consecutive years in the same office.

31 (5) After the initial appointments have been made, the board shall meet during the month
32 of July 2020, or as soon thereafter as practicable, for the purpose of organizing and transacting
33 business. Thereafter, the board shall meet not less than twice annually and as frequently as
34 considered necessary by the president or a majority of the members. The board shall meet at a
35 time and place designated by the board. A quorum shall consist of four members.

36 (6) Board members shall receive reasonable travel expenses as prescribed by law.

37 (7) A majority of the members shall elect a president.

38 (b) Duties and responsibilities of the board. – The board may:

39 (1) Act on matters concerning competency licensure and firm registration and the process
40 of granting, suspending, reinstating and revoking a license or firm registration;

41 (2) Establish and maintain requirements for the ethical behavior of court reporters and
42 reporting firms, including, but not limited to, conflict of interest provisions, inappropriate
43 relationships with a party or a party's attorney, failure to honor a contract or commitment to furnish
44 transcripts, and adherence to all requirements of law relating to court reporters, reporting firms,

45 or reporting entities;

46 (3) Establish a procedure for the investigation of complaints against licensed court
47 reporters and reporting firms;

48 (4) Set a fee schedule for granting licenses and renewals of licenses;

49 (5) Maintain records of its proceedings and a current registry of licensed court reporters,
50 a current registry of registered reporting firms, and a current registry of temporarily licensed court
51 reporters. Registries are matters of public record;

52 (6) Maintain a complete record of all proceedings of the board;

53 (7) Adopt continuing education requirements no later than one month following the
54 effective date of the enactment of this article. The requirements shall be implemented no later
55 than November 30, 2020; and

56 (8) Issue numbered licenses to applicants found qualified.

57 (c) Board to propose rules. -- The board shall propose rules for legislative approval in
58 accordance with §29A-3-1 et seq. of this code necessary to implement, administer and otherwise
59 effectuate the purposes of this article. Upon legislative enactment, the rules shall be published in
60 the standards of professional practice and made available to all licensees.

§30-42-7. Initial certification.

1 (a) Eligibility for Application. – An applicant for standard certification as a certified reporter
2 at a minimum shall:

3 (1) Be at least 18 years of age.

4 (2) Be a citizen or legal resident of the United States and West Virginia.

5 (3) Satisfy the exam requirements of this article.

6 (4) Be of good moral character.

7 (5) Possess a high school diploma or a general equivalency diploma or a similar document
8 or certificate.

9 (6) Pursuant to rules adopted by the Secretary of State demonstrate reasonable

10 proficiency in making verbatim records of trial or judicial or related proceedings.

11 (7) Comply with the laws and rules and orders adopted by the Secretary of State governing
12 certified reporters in this state.

13 (8) Pay the fees established pursuant to this article and the board.

14 (9) Attest to being familiar with, and will adhere to the other provisions of this code relating
15 to court reporting, including §57-4-1, §57-4-2, §47-27-1 et seq. of this code, and the West Virginia
16 Rules of Civil Procedure Rules 28 through 32.

17 (b) An applicant shall provide proof of passing: –

18 (1) The registered professional reporter's examination (RPR) by NCRA; or

19 (2) The certified verbatim reporter's examination (CVR) by NVRA; or

20 (3) The certified court reporter examination by the West Virginia Supreme Court of
21 Appeals (WV-CCR); or

22 (4) The certified electronic court reporter (CER) and certified electronic transcriber (CET)
23 examinations by AAERT.

24 (c) Eligibility for Application without Examination (Grandfather Clause): –

25 (1) If an applicant has been actively engaged in the practice of court reporting in the State
26 of West Virginia for a period of 24 months preceding the effective date of this article, and has not
27 passed a certification test, the applicant shall be issued a certificate, if the person verifies upon
28 written affidavit from three current members of the West Virginia Bar in good standing that the
29 person has been actively engaged in the practice of court reporting in this state in the 24 months
30 preceding the effective date of this article; or

31 (2) If an applicant who has been actively engaged in the practice of court reporting in the
32 State of West Virginia for less than 24 months preceding the effective date of this article and has
33 not met the criteria, the applicant has 24 months after the effective date of this article to pass the
34 certified court reporter examination. The person may be awarded a temporary certificate by the
35 board upon application and payment of the required application fees. The temporary certificate

36 shall be valid for a period of 24 months and is not renewable.

37 No temporary certificate under this subsection may issue after December 31, 2020.

38 (d) Temporary Certification. -- A graduate of an approved court reporting program or its
39 equivalent recognized by the board shall be awarded a temporary certificate upon initial
40 application for certification testing to the board and payment of the required application fees. The
41 temporary certificate shall be valid for a period of 24 months. Additional temporary licenses
42 following expiration may be issued at the discretion of the board.

43 (e) Inactive Status. -- The board shall establish an inactive status for persons who are not
44 actively engaged in the practice of court reporting. The holder of an inactive license issued
45 pursuant to this section may not engage in any activity for which a license is required. An inactive
46 license issued pursuant to this section may not engage in any activity for which a license is
47 required. An inactive license issued pursuant to this section shall be renewed during the same
48 time period in which an active license is renewed. The holder of an inactive license is exempt
49 from any continuing education requirement for renewal of an active license. The renewal fee for
50 a license or certification in an active status shall also apply to a renewal or a license or certification
51 in an inactive status, unless a lesser renewal fee is specified by the board. In order for the holder
52 of an inactive license to restore his license to an active status, the holder of an inactive license
53 shall pay the required renewal fee and complete the continuing education equivalent, if required
54 by the board, for renewal of an active license, unless a different requirement is specified by the
55 board.

56 (f) Application for Initial Certification. -- An applicant shall submit a full set of fingerprints
57 with the fee prescribed in this article to the Secretary of State for the purpose of obtaining a state
58 and federal criminal records check.

§30-42-8. Role and responsibilities of certified reporters.

1 In addition to the requirements of this article relating to certification and licensure, the
2 following requirements apply:

3 (a) Code of Conduct. -- Each certified reporter shall adhere to the code of conduct adopted
4 by the board.

5 (b) Identification. -- A certified reporter shall include the title “certified reporter” or the
6 abbreviation “CR” and the reporter’s certificate number (e.g. CR-1234) on the title or cover page
7 of any transcript, on any business card, advertisement or letterhead and on the certificate of any
8 transcript.

9 (c) Certification of Transcripts, Billings and Business Terms. -- A certified reporter and
10 registered reporting firm (if the certified reporter is engaged by a registered reporting firm) shall
11 sign and certify each transcript that the certified reporter prepares before the transcript may be
12 used in court. Certification shall provide that the certified reporter and registered reporting firm, if
13 applicable, have complied with the ethical obligations set forth in this article.

14 (d) Transcript Production. -- The following requirements apply to transcript production:

15 (1) Transcript Format. A certified reporter shall prepare transcripts in a format consistent
16 with the standards in this article.

17 (2) Production after Expiration of Certificate, Inactive Status or Voluntary Resignation. A
18 reporter who is no longer certified, or who is in inactive status may not practice as a reporter or
19 produce transcripts except for those proceedings that took place while their certificate was valid
20 and active. The reporter shall use the same certificate number on the title or cover page of any
21 transcript and letterhead that was used while the reporter was certified.

22 (e) Oaths and Affirmations. A certified reporter may administer oaths and affirmations.--

23 The parties may agree or the court may order that a deposition be taken by telephone or
24 other remote means. For the purposes of this article, the deposition takes place where the
25 deponent answers the questions. If the deponent is not in the certified reporter’s physical
26 presence, the certified reporter may nonetheless place the deponent under oath or affirmation
27 with the same force and effect as if the deponent was in the certified reporter’s physical presence.

28 The certified reporter whose physical presence is outside the State of West Virginia may

29 administer oaths and affirmations if the proceeding involves a West Virginia action or the action
30 is managed within a court in West Virginia.

§30-42-9. Renewal of certificate.

1 (a) Expiration Date. -- A certificate issued pursuant to this article is subject to renewal and
2 expiration as prescribed by the rules adopted by the board. All certifications expire at midnight on
3 June 30 of each even numbered year.

4 (b) Application. -- The certificate holder is responsible for applying for a renewal certificate.
5 A certified reporter shall submit a completed renewal application, applicable fees pursuant to this
6 article and documentation by the renewal application deadline established by the board to remain
7 eligible to serve as a certified reporter in West Virginia.

8 (c) Continuing Education. -- A certificate holder shall include with the application for
9 renewal documentation satisfactory to the board that the certificate holder has successfully
10 completed at least 20 hours total of approved continuing education for the two-year cycle. The
11 certificate holder shall comply with the provisions regarding continuing education contained in this
12 article.

13 (d) Decision Regarding Renewal. --

14 (1) On receipt of the renewal application and the renewal fee, the board shall issue the
15 applicant a new certificate unless the board finds that the applicant does not meet the
16 requirements for renewal.

17 (2) The board may deny renewal of a certificate for any of the reasons specified as follows:

18 (A) The applicant does not meet to the board's satisfaction the requirements of this article.

19 (B) The applicant has not been fingerprinted and the supreme court has not received and
20 reviewed the criminal records check analysis.

21 (C) The applicant has not submitted the applicable documents and fees.

22 (D) The applicant committed fraud, dishonesty, and corruption or material
23 misrepresentation in applying for a certificate or on a certificate examination in this state or

24 another state.

25 (E) The applicant has a record of conviction by final judgment of a felony offense or any
 26 other offense involving moral turpitude.

27 (F) The applicant is currently on probation, parole or community supervision for a felony
 28 offense or is named in an outstanding warrant.

29 (G) The court has ordered treatment for the applicant or has found the applicant to be
 30 incapacitated.

31 (H) The applicant is subject to revocation or suspension of a certificate or has had any
 32 occupational or professional license denied, revoked or suspended.

33 (I) The applicant has been found civilly liable in an action involving fraud,
 34 misrepresentation, material omission, misappropriation, theft or conversion.

§30-42-10. Complaints, investigations, disciplinary action proceedings and certification
and disciplinary hearings.

1 The board may dismiss complaints that are not within the jurisdiction of the board;
 2 complaints that are insufficient; or complaints that contain allegations that if true, would not
 3 constitute a violation of the applicable statutes or court rules. Notwithstanding these provisions
 4 the Secretary of State may not dismiss these complaints but shall forward these complaints to the
 5 board with a written recommendation for dismissal. The board shall enter the final decision
 6 regarding the disposition of the complaints.

§30-42-11. Code of conduct.

1 The following code of conduct applies to all certified reporters. The purpose of this code
 2 of conduct is to establish minimum standards for performance by certified reporters and registered
 3 reporting firms.

4 (a) Ethics. –

5 (1) A certified reporter and registered reporting firm shall avoid impropriety and the
 6 appearance of impropriety in all professional activities, shall respect and comply with the laws

7 and shall act at all times in a manner that promotes public confidence in the integrity and
8 impartiality of the judicial system.

9 (2) A certified reporter and registered reporting firm shall exercise fairness and impartiality
10 toward each participant in all aspects of reported proceedings and always offer to provide
11 comparable service to all parties in a proceeding.

12 (3) A certified reporter and registered reporting firm may have no personal or financial self-
13 interest in the reporting of a proceeding and shall exercise caution to avoid any appearance of
14 self-interest.

15 (4) A certified reporter and registered reporting firm shall be alert to situations that are
16 conflicts of interest that may give the appearance of a conflict of interest or create an appearance
17 of partiality.

18 (5) A certified reporter and registered reporting firm shall promptly make full disclosure to
19 all parties or their representatives of any relationships which may give the appearance of a conflict
20 of interest or partiality.

21 (6) A certified reporter shall refrain from knowingly making misleading, deceptive, untrue
22 or fraudulent representations while in the practice of reporting. A certified reporter may not engage
23 in unethical or unprofessional conduct that is harmful or detrimental to the public in the practice
24 of reporting.

25 (7) A certified reporter or registered reporting firm's certification as required by this article
26 means the certified reporter or registered reporting firm affirms the following:

27 (A) The transcript is a full, true, and accurate record of the proceeding;

28 (B) The preparation, production, distribution, and billing of the transcript and copies of the
29 transcript comply with the West Virginia Code and the West Virginia Rules of Civil Procedure;

30 (C) All billings and invoicing to all the parties related in any manner to the reporting of the
31 proceedings or cases and the production of the transcript and any products or services ancillary
32 thereto comply with other provision of this code, including §57-4-1 , §57-4-2, §47-27-1 et seq. of

33 this code and the West Virginia Rules of Civil Procedure;

34 (D) All financial terms and other services have been offered on the same terms to all
35 parties to the litigation;

36 (E) Each party was able to purchase the transcript and such ancillary services as
37 requested by that party without regard to the ancillary services purchased by any party;

38 (8) A certified reporter or registered reporting firm shall not provide reporting services in
39 any action if they are:

40 (A) A party to the action;

41 (B) A relative, employee, or attorney of one of the parties;

42 (C) Someone with a financial interest in the action or its outcome; or

43 (D) A relative, employee, or attorney of someone with a financial interest in the action or
44 the outcome; or

45 (E) Retained to provide court reporting services in the action by an individual or entity
46 other than a party, a party's attorney or a registered reporting firm.

47 (9) A judicial officer may declare a deposition void if a certified reporter with an association
48 to a matter takes a deposition.

49 (10) Except as expressly set forth in this article, the provisions of this article may not be
50 waived by disclosure, agreement, stipulation, or otherwise, including West Virginia Rule of Civil
51 Procedure 29(a), and in sound-and-visual legal proceedings, or any transcripts produced
52 therefrom, reported by a certified reporter or registered reporting firm.

53 (11) Enter into an agreement, whether formal or informal, for court reporting services
54 which restricts the noticing attorney or party to a legal proceeding from selecting and using the
55 court reporter of his or her own choosing or otherwise requires the noticing attorney or party to a
56 legal proceeding to select or use a court reporter not of his or her own choosing. Before accepting
57 an assignment for court reporting services, the court reporter shall make reasonable efforts to
58 ascertain whether any arrangement exists which is prohibited under this article.

59 (12) Provisions of this article do not apply to certified reporting services for the courts,
60 agencies, or instrumentalities of the United States or of the State of West Virginia.

61 (b) Professionalism. –

62 (1) A certified reporter and registered reporting firm shall ensure the confidentiality and the
63 security of information, verbal or written, entrusted to the certified reporter by the court or any of
64 the parties in the proceeding is preserved. If the certified reporter or registered reporting firm uses
65 a third party for any aspect of the preparation, production, distribution or storage of a transcript,
66 the certified reporter or registered reporting firm, as appropriate, shall ensure that the third party
67 maintains the confidentiality and security of the information. Unless authorized by court order or
68 upon agreement of the parties, a certified reporter and registered reporting firm may release the
69 transcript only to the witness, a party, and the witness' or party's attorneys. A certified reporter
70 and registered reporting firm may not violate or knowingly aid, assist or facilitate a third party's
71 violation of a court order regarding confidentiality. A registered reporting firm shall have in place
72 procedures to ensure its awareness of court orders and agreements regarding confidentiality
73 when notified by counsel and/or the certified court reporter.

74 (2) A certified reporter and registered reporting firm shall be truthful and accurate when
75 advertising or representing the certified reporter's qualifications, skills, abilities, or the services
76 provided.

77 (3) A certified reporter and registered reporting firm shall maintain and observe the highest
78 standards of integrity and truthfulness in all professional dealings.

79 (4) A certified reporter shall keep abreast of current literature, technological advances and
80 developments and shall fulfill ongoing training requirements to maintain professionalism.

81 (5) As part of the judicial department's commitment to the principle of access to justice for
82 all and the integral role of certified reporters, certified reporters are encouraged to provide pro
83 bono services, when requested through qualified legal assistance organizations providing free
84 legal services to the indigent. Certified reporters providing pro bono services pursuant to this

85 subsection shall disclose the pro bono services to all parties in the case.

86 (c) Fees and Services. –

87 (1) Except as otherwise provided in this article, a certified reporter shall charge all parties
88 or their attorneys in the same action the same price for an initial copy of a transcript (A “copy”
89 does not include the “original” of the transcript as defined §47-27-1(b) of this code). Additional
90 copies purchased by the same ordering party may be charged at a reduced rate provided
91 disclosure is made to all parties involved in the case and the same reduced rate for additional
92 copies is provided to all parties involved in the case. Each party shall be treated as an individual
93 party to the action and is required to purchase an initial copy at the same rate provided to all
94 parties requesting a copy in the same action before they may obtain additional copies at a reduced
95 rate. A certified reporter’s and registered reporting firm’s obligation to charge each party equally,
96 includes, but is not limited to, complementary services, volume discounts, rebates, waivers, or fee
97 reductions to any party because of the individual or cumulative effect of performing reporting
98 services in said action. A certified reporter may provide services on a pro bono basis as provided
99 in this article.

100 (2) Prior to the commencement of a legal proceeding, and at any time during or following
101 the conclusion of a legal proceeding, upon request, an attorney or a party to that legal proceeding
102 is entitled to an itemized statement of all rates and charges for all services that have been or will
103 be provided by the court reporter or business, entity or firm providing or arranging for court
104 reporting services to any party to the legal proceeding.

105 (3) A certified reporter and registered reporting firm may not enter into an agreement
106 concerning fees that is unlawful or inconsistent with this article or this code.

107 (4) A certified reporter and registered reporting firm may not charge a fee for the electronic
108 copy or paper copy of a transcript that is more than 55 percent of the cost of the original transcript,
109 except by agreement of all parties to a legal proceeding. This prohibition does not apply to real-
110 time court reporting services or accelerated transcript delivery requests made by the party

111 requesting a copy of the transcript when the party requesting the original has not requested
112 accelerated delivery, or to pro bono transcripts provided for in this article.

113 (5) A certified reporter and registered reporting firm shall at all times be aware of and avoid
114 impropriety or the appearance of impropriety, which may include, but is not limited to, offering any
115 party, their attorney or the attorney's staff, representative, agent, insurer, or insured, or someone
116 with a financial interest in the outcome of the litigation:

117 (A) Establishing contingent fees as a basis of compensation;

118 (B) Directly or indirectly receiving of any gift, incentive, reward, or anything of value as a
119 condition of the performance of professional services;

120 (C) Directly or indirectly offering to pay any commission or other consideration in order to
121 secure professional assignments;

122 (D) Directly or indirectly giving, for the benefit of employment, any gift, incentive, reward,
123 or anything of value to attorneys, clients, witnesses, insurance companies or any other persons
124 or entities associated with the litigation, or to the representatives or agents of any of the foregoing,
125 except for:

126 (i) Nominal items that do not exceed \$25 per transaction and \$150 in the aggregate per
127 recipient each year; and

128 (ii) Pro bono services; and

129 (E) Entering into any written or verbal financial relationship with counsel, parties of interest
130 or their intermediaries that would require a certified reporter to violate any provision of this section.

131 (F) Notwithstanding any other provision of this article, the certified reporter or registered
132 firm may establish such individual payment terms for each party as the certified reporter or
133 registered reporting firm considers commercially reasonable.

134 (d) Skills and Practice. –

135 (1) A certified reporter shall take full and accurate stenographic notes or voice written or
136 sound-only recordings of any proceeding and may not willfully alter the notes or recordings.

137 (2) A certified reporter shall accurately transcribe verbatim any stenographic notes, or
138 voice written, or sound-only recordings taken at any proceeding, and may not willfully alter the
139 transcript.

140 (3) A certified reporter shall provide a transcript to a client or court in a timely manner. The
141 certified reporter shall meet promised delivery dates and make timely delivery of transcripts when
142 no date is specified. A certified reporter shall meet transcript preparation deadlines in accordance
143 with rules, statutes, court orders, or agreements with the parties. A certified reporter shall provide
144 immediate notification of delays, including to the registered reporting firm.

145 (4) A certified reporter may not go “off the record” during a deposition or court proceeding
146 unless agreed to by all parties or their attorneys, or ordered by the court.

147 (5) A certified reporter shall accept only those assignments for which the reporter’s level
148 of competence will result in the preparation of an accurate transcript. The certified reporter shall
149 decline an assignment when the reporter’s abilities are inadequate.

150 (6) A certified reporter shall prepare the record in accordance with applicable laws, rules,
151 or court order.

152 (7) A certified reporter shall preserve the stenographic notes or voice written or sound-
153 only recordings in accordance with this code, federal laws and the West Virginia Rules of Civil
154 Procedure.

155 (8) A certified reporter shall have at least one backup recording that is separate from the
156 primary recording method used to report the proceeding. Absent a court order to do so, the
157 reporter’s audio backup is the reporter’s work product, and is not to be provided to a party
158 requesting the same as it may contain inadvertent, off-the-record, or privileged information.

159 (e) Performance in Accordance with Law. –

160 (1) A certified reporter shall perform all duties and discharge all obligations in accordance
161 with applicable laws, rules, or court orders.

162 (2) A certified reporter shall perform the duties of the profession using only the method of

163 reporting the applicant used to obtain certification.

§30-42-12. Fee schedule.

1 (a) Certification Fees. -- The following fees may be charged and collected:

2 (1) Initial Certification for Two Year Certification Period \$200.

3 (A) For certification expiring more than one year after application date \$200.

4 (B) For certification expiring less than one year after application date \$100.

5 (2) Fingerprint Processing -- (Rate as set by West Virginia law and subject to change).

6 (3) Other fees as set by the Secretary of State's office and the board of court reporting.

7 (b) Fees collected shall be deposited into the "Certified Reporters Fund".

§30-42-13. Continuing education policy.

1 (a) Purpose. -- Reporting is integrally related to the prompt, effective, and impartial
2 operation of the judicial system. Certified reporters are required to demonstrate a basic level of
3 competency to become certified and practice in West Virginia. Ongoing, continuing education is
4 one means to ensure a certified reporter maintains continuing competence in the field of reporting
5 after certification is obtained. Continuing education also provides opportunities for certified
6 reporters to keep abreast of changes in the reporting and legal professions and the West Virginia
7 judicial system.

8 (b) Applicability. --

9 (1) All certified reporters shall complete at least 20 hours of continuing education each
10 two-year cycle to be completed on or before December 31 of every odd numbered year. Five
11 hours of participation are transferable to the next upcoming certification period.

12 (2) All certified reporters shall comply with the continuing education policies in this
13 subsection.

14 (c) Responsibilities of Certified Reporters. --

15 (1) Each certified reporter shall ensure compliance with the continuing education
16 requirements, maintain documentation of completion of continuing education, and provide the

17 documentation upon the request of the board.

18 (2) Upon request of the board, a certified reporter shall provide any additional information
19 required by the board or division staff when reviewing continuing education applications and
20 documentation.

21 (3) Continuing education not recognized for credit upon board review does not in any way
22 relieve the certified reporter of the responsibility to complete the required hours of continuing
23 education.

24 (d) Authorized Continuing Education Activities. –

25 (1) Continuing education is designed to provide an understanding of current
26 developments, skills, or procedures related to the practice of reporting. Continuing education shall
27 address the areas of proficiency, competency, and performance of stenographic, voice written, or
28 sound-only reporting, and impart knowledge and understanding of the profession of reporting, the
29 West Virginia judiciary and the legal process, and increase the participant's understanding of the
30 responsibilities of a certified reporter and the reporter's impact on the judicial process. The
31 certified reporter shall complete the continuing education requirements in one or more of the
32 following subject areas:

33 (A) English, including grammar and punctuation, vocabulary and etymology, proofreading
34 and editing, and regional and minority dialects, colloquialisms, and commonly heard slang.

35 (B) Medical terminology presented by subject matter experts on terminology and concepts,
36 commonly encountered by certified reporters including Greek and Latin roots, homonyms and
37 sound-alikes, abbreviations, pharmacy, anatomy and physiology, and specialized medical fields,
38 (for example, neurology, dentistry, radiology, and forensic medicine).

39 (C) Legal terminology presented by subject matter experts on terminology and concepts
40 commonly encountered by certified reporters including etymology, substantive law, procedural
41 law, various subdivisions of law, (for example, criminal, domestic, juvenile, and civil), and how
42 cases are processed and argued.

43 (D) Other technical subjects presented by subject matter experts with emphasis on
44 terminology and concepts commonly encountered by certified reporters (for example, accident
45 reconstruction, chemistry, construction, workman's compensation, and product liability).

46 (E) Reporting technology including computer-aided transcription (CAT) skills: CAT
47 equipment, hardware and software, DOS, ASCII and compressed transcript; computer skills
48 including word processing, spreadsheets, database applications, windows, and Internet
49 applications; equipment maintenance, and computer-integrated courtrooms.

50 (F) Realtime reporting including writing for realtime, communicating with the hearing
51 impaired, working with an interpreter, the Americans with Disabilities Act, and realtime
52 certification.

53 (G) Certification tests, including the Registered Merit Reporter, Registered Diplomat
54 Reporter, Certified Realtime Reporter, Certified Realtime Captioner, Certified Manager of
55 Reporting Services and Certificate of Merit, Realtime Verbatim Reporter, Realtime Verbatim
56 Reporter – Master, Registered Broadcast Captioner – Master, and Registered CART Provider -
57 Master. A certified reporter may receive continuing education credit for these activities in
58 accordance with the standards established by the NCRA and the NVRA.

59 (H) Ethics for certified reporters and court employees, including cooperation with lawyers,
60 judges, court staff, and fellow certified reporters, professional attire, courtesy, and impartiality to
61 all litigants, information verses legal advice, and public relations.

62 (I) The West Virginia court system including the state and federal constitution, branches
63 of government, West Virginia court jurisdiction and responsibilities, resource materials including
64 the West Virginia Statutes, the West Virginia Rules of Civil Procedure, case law and administrative
65 orders, and rules; and current issues in the West Virginia court system.

66 (J) Role and responsibilities of certified reporters, including §57-4-1, §57-4-2, §47-27-1, et
67 seq., of this article, and the West Virginia Rules of Civil Procedure through 32 for certified
68 reporters.

69 (K) Writing and editing skills including transcript style and setups, appropriate editing,
70 scoping, scanning and printing, writing for a note reader, scopist or editor; indexing of witnesses,
71 and exhibits and transcript formats.

72 (L) Research skills including utilizing reference materials, libraries, and research
73 techniques.

74 (M) Management issues including public relations and customer service; accounting,
75 ergonomics, time management, and office management.

76 (N) Continuing education units (CEUs) or personal development credits (PDCs) approved
77 by NCRA, NVRA, or the AAERT.

78 (e) Conferences. – A certified reporter may receive continuing education credit for
79 attendance at a conference relevant to the profession of reporting. A certified reporter may receive
80 100 percent of the continuing education credits for attendance at the conference, if the conference
81 is directly related to the reporting profession. Introductory remarks, breaks, meals, business
82 meetings, and general sessions of the conference do not qualify as continuing education hours.

83 (f) University, College and Other Educational Institution Courses. – A certified reporter
84 may receive continuing education credit for a course provided by a university, college or other
85 institutionally accredited educational program if the reporter successfully completes the course
86 with a grade of “C” or better or a “pass” on a pass/fail system. A certified reporter may receive
87 continuing education credit if the course is relevant to the reporting profession and may receive
88 credit up to two times the number of credit hours awarded by the educational institution. The
89 maximum total hours of continuing education credits earned from educational course work shall
90 not exceed 50 percent of the total number of continuing education hours required for renewal.

91 (g) Authoring or Coauthoring Articles. – A certified reporter may receive continuing
92 education credit for authoring or coauthoring an article directly related to reporting, if the article is
93 published in a state or nationally recognized professional journal of court reporting or law and if
94 the article is a minimum of 1000 words in length. A certified reporter may receive a maximum of

95 three hours of continuing education credit for authoring an article or articles during a renewal
96 period. A certified reporter shall not receive continuing education credit for the same article
97 published in more than one publication or republished in the same publication in later editions.

98 (h) *Self Study.* – A certified reporter may receive continuing education credit for self-study
99 activities, including video and audio tapes, and other methods of independent learning. A certified
100 reporter shall not receive continuing education credit for simply reading books, seminar or other
101 printed materials. The maximum hours of continuing education credits earned in a self-study
102 format shall not exceed 50 percent of the total number of continuing education hours required for
103 renewal. However, if the self-study activities are NCRA, NVRA, or AAERT courses, a court
104 reporter may receive up to 100 percent of the total number of continuing education hours required
105 for renewal.

106 (i) *Serving as Faculty.* – A certified reporter may receive continuing education credit for
107 serving as an instructor, speaker, panel member or faculty of a continuing education seminar
108 directly related to the profession of reporting. A certified reporter may receive continuing education
109 credit for the actual presentation time and up to two hours of preparation time for each hour of
110 presentation. The maximum hours of continuing education credits earned as faculty credit shall
111 not exceed 50 percent of the total number of continuing education hours required for renewal and
112 a certified reporter shall not receive duplicate credit for repeating a presentation during the
113 certificate period.

114 (j) *Minimum Time.* – Each continuing education activity shall consist of at least 30 minutes
115 of “actual clock time” spent by a certified reporter in actual attendance at and completion of an
116 approved continuing education activity. “Actual clock time” includes the total number of hours
117 attended, minus the time spent for introductory remarks, breaks, meals, and business meetings.
118 After completion of the first 30 minutes of a continuing education activity, credit shall be
119 recognized in 15-minute increments.

120 (k) *Maximum Credit.* – Unless the board otherwise determines a continuing education

121 activity is directly related to the reporting profession, a certified reporter shall not receive more
122 than 50 percent of the credit requirement for the certificate period through one activity.

123 (l) Non-Qualifying Activities. –

124 (1) The following activities, regardless of whether or not the activity is approved for credit
125 by NCRA, NVRA, or AAERT shall not qualify for continuing education credit for certified reporters:

126 (A) Programs completed for qualification for initial certification;

127 (B) Programs with a primary focus on teaching nonverbal skills that are not directly related
128 to reporting;

129 (C) Attendance or participation at professional or association business meetings, general
130 sessions, elections, policymaking sessions, or program/employee orientation;

131 (D) Serving on committees or councils or as an officer in a professional organization;

132 (E) Activities completed as required by the board as part of a disciplinary action; and

133 (F) Mentoring activities by a certified reporter.

134 (2) Repeat of an Activity. – Continuing education activities repeated during a certificate
135 period do not qualify for credited duplicate hours.

136 (3) If a certified reporter attends part, but not all of a continuing education activity, the
137 certified reporter is not eligible to claim partial credit.

138 (m) Documentation of Attendance or Completion.-- When attending or completing a
139 continuing education activity, each certified reporter shall obtain documentation of attendance or
140 completion from the sponsoring entity. -- At a minimum, the proposal shall include the:

141 (1) Name of the sponsor;

142 (2) Name of the participant;

143 (3) Topic of the subject matter;

144 (4) Number of hours actually attended or the number of credit hours awarded by the
145 sponsoring entity;

146 (5) Date and place of the program; and

147 (6) Signature of the sponsor, or an official document from the sponsoring entity.

148 (n) Compliance and Non-Compliance. –

149 (1) Affidavit of Compliance. A certified reporter shall submit an affidavit of continuing
150 education compliance when applying for renewal of certification. The certified reporter shall
151 submit the affidavit in the format provided by the Secretary of State. The board and Secretary of
152 State may request documentation or additional information from a certified reporter applying for
153 renewal to verify compliance with the continuing education requirements. If the certified reporter
154 fails to provide the requested documentation or additional information, the board may deem the
155 application for renewal incomplete and deny renewal of certification.

156 (2) Proration of Continuing Education Requirement. A certified reporter whose certificate
157 expires less than six months from the effective date of certification shall complete no less than
158 five hours of continuing education credit during the balance of the certification period. In
159 subsequent certification periods, the certified reporter shall complete the 20-hour total continuing
160 education requirement. Proration of the continuing education requirement does not apply to
161 certified reporters who previously held certification and allowed their certification to lapse. A
162 certified reporter who attends approved continuing education prior to the date of their initial
163 certification, but within the certification renewal period may claim these continuing education
164 hours as fulfilling the continuing education requirements for their first renewal of certification
165 provided the continuing education meets all provisions of subsection (l) of this section.

166 (3) Extension of Continuing Education Requirements. A certified reporter seeking renewal
167 of certification who has not fully complied with the continuing education requirement may request
168 an extension of the requirement under the following conditions:

169 (A) The certified reporter submits a notarized written statement to the board, explaining
170 the facts regarding noncompliance and requesting an extension of the requirements no later than
171 the expiration of the certificate. Upon a showing of extenuating circumstances, the board may
172 grant an extension of a maximum of 90 days for the certified reporter to complete the continuing

173 education requirement.

174 (B) The board shall determine whether extenuating circumstances exist. In reviewing the
175 request, the board shall consider if the certified reporter has been unable to devote sufficient
176 hours to fulfill the requirements during the certificate period because of:

177 (i) Full-time service in the armed forces of the United States during a substantial part of
178 the certificate period;

179 (ii) An incapacitating illness documented by a statement from a currently licensed
180 physician;

181 (iii) A physical inability to travel to the sites of approved programs documented by a
182 statement from a currently licensed physician; or

183 (iv) Any other special circumstances the board deems appropriate.

184 (C) A certified reporter whose certificate has been suspended or revoked by the board is
185 not eligible to request an extension of the continuing education requirement.

186 (4) Random Audits of Compliance. During each renewal review period, the board shall
187 randomly select a specified number of certified reporters to demonstrate continuing education
188 compliance through submission of proof of continuing education participation. Refusal or failure
189 to respond to a board request for continuing education compliance documentation may result in
190 denial of renewal of certification or disciplinary action.

191 (5) A certified reporter who fails to meet the continuing education requirement, falsifies
192 continuing education documents, completes any portion of the continuing education requirement
193 after December 31 or willfully misrepresents continuing education activities and attendance at
194 continuing education activities is subject to any or all of the following actions by the board:

195 Assessment of the delinquent continuing education fee;

196 Denial of renewal of certification; and

197 Disciplinary action.

198 (o) Board Decision Regarding Continuing Education Credits. –

199 (1) Upon a review of continuing education documentation and any applicable additional
200 information requested, the board may:

201 (A) Recognize compliance by the certified reporter with the continuing education
202 requirement;

203 (B) Require additional information from the certified reporter seeking renewal before
204 making a decision;

205 (C) Recognize partial compliance with the requirement and order remedial measures; and

206 (D) Enter a finding of noncompliance.

207 (2) Secretary of state staff shall notify the certified reporter, in writing, within 10 days of
208 the board's decision. A certified reporter may appeal the decision by submitting a written request
209 for review by the board with secretary of state staff within 15 days of receipt of notification of the
210 board's decision. The certified reporter may request to appear before the board at the next
211 available regularly scheduled board meeting.

212 (3) The certification of a reporter who timely appeals a decision by the board regarding
213 continuing education shall continue in force until a final decision is made by the board.

214 (4) The board shall make the decision on the appeal in writing. The decision is final and
215 binding.

§30-42-14. Transcript format standards.

1 Transcripts prepared by certified reporters and registered reporting firms in courts in the
2 State of West Virginia shall conform to the following standards:

3 (a) No fewer than 24 typed lines on standard 8-1/2 by 11 inch pages.

4 (b) No fewer than nine characters to the typed inch.

5 (c) A full line of text shall be no less than 56 characters and/or spaces unless timestamping
6 is used, in which case no fewer than 48 characters and/or spaces shall be used on a full line of
7 text.

8 (d) Timestamping may only be printed on a transcript under any of the following

9 circumstances:

10 (1) When a deposition is videotaped;

11 (2) When requested by counsel on the record; and

12 (3) When a transcript will have not less than 48 characters per line.

13 (e) The page numbers, headers and footers do not count as a line of text. Line numbers
14 and the spaces preceding text do not count as a character.

15 (f) Each question and answer to begin on a separate line.

16 (g) Each question and answer to begin no more than five spaces from the left-hand margin
17 with no more than five spaces from the question and answer to the text.

18 (h) Carry-over question and answer lines to begin at the left-hand margin.

19 (i) Colloquy material to begin no more than 15 spaces from the left-hand margin, with
20 carryover colloquy to the left-hand margin. In colloquy, text shall begin no more than two spaces
21 after the colon following speaker identification.

22 (j) Quoted material to begin no more than 15 spaces from the left-hand margin, with carry-
23 over lines to begin no more than 10 spaces from the left-hand margin.

24 (k) Parentheticals and exhibit markings to begin no more than 15 spaces from the left-
25 hand margin, with carry-over lines to begin no more than 15 spaces from the left-hand margin.

26 (l) The name of the certified reporter, title ("certified reporter" or "CR") and certificate
27 number on the title page and certificate page.

28 (m) The certified reporter and registered reporting firm shall certify on a certification page
29 of each transcript of a legal proceeding, the following: "I certify that the attached transcript and its
30 preparation, production, distribution, and billing meets the requirements set forth in §57-4-1, §57-
31 4-2, and §47-27-1, et seq." The language in this certification replaces the language in §47-27-
32 3(b).

33 (n) Rough Drafts. An uncertified rough draft transcript shall not include a title page,
34 appearance page, or certificate page.

35 (1) An uncertified rough draft transcript shall include a header or footer on each page
36 stating “UNCERTIFIED UNEDITED ROUGH DRAFT TRANSCRIPT”.

37 (2) In lieu of a title page, each rough draft shall begin with a disclaimer stating the
38 uncertified rough draft transcript cannot be quoted in any pleading or for any other purpose and
39 may not be filed with any court. The disclaimer shall contain a brief identification of the contents,
40 for example, John Smith deposition, 6/17/20. The certified reporter should keep a copy of the
41 disclaimer.

§30-42-15. Registered reporting firm.

1 A reporting firm that employs, arranges for, or contracts with a certified reporter to provide
2 services regulated pursuant to this article must be registered with the board in accordance with
3 the provisions of this article.

4 (a) A reporting firm shall register with the board by providing to the board on a form
5 approved by the same, the following information:

6 (1) Full legal name;

7 (2) Address;

8 (3) Telephone number;

9 (4) Email address; and

10 (5) Contact individual, including name, address, telephone number, and email address.

11 (b) Before the registration is effective:

12 (1) The reporting firm shall certify, on a form acceptable to the board, that the firm agrees
13 to comply with §57-4-1, §57-4-2, 47-27-1, et seq., and 30-41-1, et seq. of this code in the same
14 manner in which it would need to comply if it were a certified reporter;

15 (2) The reporting firm shall agree to submit to the jurisdiction of the Secretary of State to
16 the extent it has performed activities regulated by this article; and

17 (3) The reporting firm shall pay the fee set forth in this article.

18 (c) A registered reporting firm registration expires on June 30 of each even numbered year

19 following its issuance, and may be renewed by filing a renewal application on a form acceptable
20 to the board that provides the information and certifications set forth in this section.

21 (d) A registered reporting firm that contracts with, arranges for, or employs a certified
22 reporter to perform services regulated by this article shall ensure that in the performance of those
23 duties the certified reporter, and registered reporting firm adhere to the provisions of this article.

24 (e) A registered reporting firm that fails to comply with its obligations as set forth in this
25 article may have its registration revoked, suspended, or the registered reporting firm may receive
26 such other discipline as a certified reporter may receive upon finding by the board that the
27 registered reporting firm violated the provisions of this article. Any disciplinary action imposed
28 upon a registered reporting firm is also imposed upon the registered reporting firm's affiliates. If
29 the registered reporting firm's registration is revoked the firm may not reapply for registration for
30 12 months, and before being re-registered the board must determine that the conduct resulting in
31 the revocation is unlikely to reoccur.

NOTE: The purpose of this bill is to create of the "Court Reporter Act of 2020" for the administration and certification of court reporters. This includes application, fees, criteria for approval or denial of certification, resolution of complaints concerning certified reporters and the discipline and administrative hearing process.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.